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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF RULES TO ADDRESS
SLAMMING AND OTHER DECEPTIVE
PRACTICES.

DOCKET NO. RT-00000J-99-0034

DECISION NO. _65452_____

OPINION AND ORDER

DATE OF HEARING:	July 8, 2002
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Teena Wolfe
IN ATTENDANCE:	William A. Mundell, Chairman Jim Irvin, Commissioner Marc Spitzer, Commissioner
APPEARANCES:	Michael W. Patten, Roshka Heyman & DeWulf, PLC, on behalf of Cox Arizona Telecom and the Arizona Wireless Carriers Group; Joan Burke, Osborn Maledon, PA, on behalf of AT&T and AT&T Wireless; Curt Hutsell, on behalf of Citizens Communications; and Timothy J. Sabo, Legal Division, on behalf of the Commission's Utilities Division Staff

BY THE COMMISSION:

On May 16, 2002, the Arizona Corporation Commission ("Commission") issued Decision No. 64800, ordering publication in the Arizona Administrative Register of a Notice of Proposed Rulemaking and the scheduling of a public comment hearing regarding the proposed rulemaking to make new A.A.C. R14-2-1901 through -1914 to address consumer protections for unauthorized telecommunications carrier changes ("Slamming Rules"), and new A.A.C. R14-2-2001 through -2012 to address consumer protections for unauthorized telecommunications carrier charges ("Cramming Rules") (collectively, "Proposed Rules").

Prior to the issuance of Decision No. 64800, the Commission's Utilities Division Staff

1 (“Staff”) received extensive informal comments on an initial draft of the Proposed Rules that it
2 released on May 22, 2001. Staff solicited informal written comments and oral comments during the
3 preparation of the Proposed Rules, and held two Staff-sponsored workshops for that purpose. Staff
4 invited industry participants, Arizona consumer groups, and the Public Advocacy Section of the
5 Office of the Arizona Attorney General to participate in the workshops.

6 After the issuance of Decision No. 64800, a public comment hearing on the Proposed Rules
7 was scheduled for July 8, 2002, by Procedural Order issued on May 17, 2002. The Procedural Order
8 stated that comments on the Proposed Rules would be taken through the date of the public comment
9 hearing, and established a schedule for the filing of formal written comments and responses prior to
10 the public comment hearing.

11 A Notice of Proposed Rulemaking regarding the Proposed Rules was filed with the Secretary
12 of State on May 17, 2002, and was published in the Arizona Administrative Register on June 7, 2002.

13 On June 5 and June 7, 2002, Qwest Corporation, WorldCom, Inc., AT&T Communications of
14 the Mountain States, Cox Arizona Telcom, LLC, Allegiance Telecom of Arizona, Inc., and the
15 Arizona Wireless Carriers Group¹ filed written comments on the Proposed Rules.

16 On June 26, 2002, Qwest Corporation and Staff filed responsive comments to the June 5 and
17 June 7, 2002 filings. Several parties’ comments, including those filed by Staff, indicated that
18 clarification might be required for certain of the Proposed Rules.

19 On July 8, 2002, Citizens Communications Company filed written comments on the Proposed
20 Rules.

21 A public comment hearing was held as scheduled on July 8, 2002, at which the Commission
22 heard oral comments from Citizens Communications Company, Cox Communications, AT&T
23 Communications of the Mountain States, AT&T Wireless, Verizon Wireless, ALLTEL, and Staff.
24 During the public comment hearing, Staff requested the opportunity to file further proposed
25 clarifications to proposed A.A.C. R14-2-1914, R14-2-2005, and R14-2-2012. Verizon Wireless
26 requested an opportunity to respond to any such filing.

27 _____
28 ¹ The Arizona Wireless Carriers Group includes Alltel Communications, AT&T Wireless, Leap Wireless, Sprint PCS,
Verizon Wireless, Voicestream, and Western Wireless.

1 A Procedural Order was issued on July 9, 2002, directing Staff to file its proposed language
 2 changes to proposed A.A.C. R14-2-1914, R14-2-2005, and R14-2-2012 by July 12, 2002, and
 3 directing all interested parties to respond on or before July 24, 2002.

4 Staff filed its proposed language changes as Supplemental Comments on July 12, 2002. On
 5 July 24, 2002, AT&T, the Arizona Wireless Carriers Group and Cox filed responsive comments.

6 Comments that the Commission received on specific sections of the Proposed Rules following
 7 their publication, including both technical and legal issues, and the Commission' analysis and
 8 resolution of those comments, are summarized in Appendix B, which is attached to and incorporated
 9 in this Decision. In response to comments received, some clarifying language has been incorporated
 10 in some sections of the Proposed Rules, as explained in Appendix B, but no substantial changes to the
 11 Proposed Rules are required. The text of the Proposed Rules incorporating the modifications is
 12 attached to and incorporated in this Decision as Appendix A. Also attached to and incorporated in
 13 this Decision is Appendix C, which is an Economic, Small Business, and Consumer Impact
 14 Statement.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
 17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On January 28, 1999, U S West Communications, Inc. ("U S West"), now known as
 20 Qwest Corporation ("Qwest"), filed an Application for Emergency Rulemaking suggesting that the
 21 Commission adopt rules against slamming ("Application").

22 2. On February 5, 1999, MCI WorldCom, Inc. filed a Response to the Application.

23 3. On February 10, 1999, AT&T Communications of the Mountain States, Inc.
 24 ("AT&T") filed a Motion to Dismiss the Application.

25 4. On February 12, 1999, the Residential Utility Consumer Office ("RUCO") filed
 26 Comments on the Application.

27 5. On February 16, 1999, Sprint Communications Company, LP ("Sprint") filed an
 28 Application to Intervene and Response to the Application. Sprint was granted intervention by

1 Procedural Order of March 10, 1999.

2 6. On March 2, 1999, U S West filed a Memorandum in Support of Application for
3 Emergency Rulemaking.

4 7. On March 29, 1999, AT&T filed a Response to U S West's Memorandum in Support
5 of Application for Emergency Rulemaking.

6 8. On April 9, 1999, MCI Telecommunications Corporation and MCI Metro Access
7 Transmission Services ("MCI") filed an Application for Leave to Intervene. MCI was granted
8 intervention by Procedural Order of April 26, 1999.

9 9. On May 22, 2001, Staff mailed an initial draft of the Proposed Rules to all
10 telecommunications providers certificated in Arizona, to Arizona consumer groups, and to the Public
11 Advocacy Section of the Office of the Arizona Attorney General, and invited all interested parties to
12 provide comments and input. Staff requested that the recipients of its initial draft of the Proposed
13 Rules file written comments by June 7, 2001, and invited them to a workshop on the Proposed Rules
14 to be held on June 13, 2001.

15 10. The Arizona Consumers Council ("Consumers Council"), Verizon Wireless
16 ("Verizon"), Cox Arizona Telcom, Inc. ("Cox"), WorldCom, Inc. ("WorldCom"), AT&T, Qwest,
17 Midvale Telephone Company, Inc., Accipiter Communications, Inc. ("Accipiter"), Table Top
18 Telephone Company ("Table Top"), Valley Telephone, Inc., Arizona Telephone Company,
19 Southwestern Telephone Company, VoiceStream Communications, Western Wireless, Inc., OnePoint
20 Communications, Valley Telephone Cooperative, Copper Valley Telephone and OnePoint
21 Communications-Colorado filed written comments on Staff's initial draft of the Proposed Rules.

22 11. On July 2, 2001, Staff mailed its first revision of the Proposed Rules to all
23 telecommunications providers certificated in Arizona, to Arizona consumer groups, and to the Public
24 Advocacy Section of the Office of the Arizona Attorney General, requested that comments thereon be
25 filed by August 6, 2001, and invited all recipients of the mailing to a second workshop on the Draft
26 Rules, to be held on August 30, 2001.

27 12. Sprint, Cox, Accipiter, Table Top, Valley Telephone Cooperative, Copper Valley
28 Telephone, Arizona Telephone Company, Southwestern Telephone Company, OnePoint

1 Communications-Colorado, Citizens Communications (“Citizens”), on behalf of its affiliates Citizens
2 Utilities Rural Company, Citizens Telecommunications Company of the White Mountains, and
3 Navajo Communications Company, RUCO, Verizon, AT&T, WorldCom, Qwest, and AT&T
4 Wireless PSC, LLC (“AT&T Wireless”) filed comments on Staff’s first revision of the draft Proposed
5 Rules.

6 13. On August 22, 2001, Staff mailed its second revision of the draft Proposed Rules to all
7 telecommunications providers certificated in Arizona, to Arizona consumer groups, and to the Public
8 Advocacy Section of the Office of the Arizona Attorney General, requested that comments thereon be
9 filed by August 30, 2001, and invited all recipients of the mailing to a second workshop on the
10 Proposed Rules to be held on August 30, 2001.

11 14. On November 9, 2001, Staff docketed a Proposed Order containing Staff’s final draft
12 of the Proposed Rules. The Proposed Order recommended that the Commission adopt Staff’s final
13 draft as Proposed Rules, and that the Commission forward the Proposed Rules to the Secretary of
14 State to accomplish publication of a Notice of Proposed Rulemaking in the Arizona Administrative
15 Register.

16 15. On November 20, 2001, Verizon Wireless filed exceptions to Staff’s November 9,
17 2001 Proposed Order, requesting that the Commission modify the Proposed Rules to exempt wireless
18 carriers.

19 16. On November 23, 2001, Qwest filed exceptions to Staff’s November 9, 2001 Proposed
20 Order, asking the Commission to reject Staff’s recommendation to forward a Notice of Proposed
21 Rulemaking to the Secretary of State. Qwest believed that the structure of the Proposed Rules would
22 create an informal complaint process that places the burden of proof on the responding
23 telecommunications carrier and establishes a presumption against the carrier in favor of the
24 subscriber, thereby raising due process concerns. Qwest also continued to urge that the proposed
25 Article 20, the Cramming Rules, be entirely eliminated, based on Qwest’s belief that the offense at
26 which proposed Article 20 is directed is better covered by existing rules of the Commission.

27 17. On November 26, 2001, AT&T filed exceptions to Staff’s November 9, 2001
28 Proposed Order, asserting that some provisions of the Proposed Rules were inconsistent with federal

1 rules, that some provisions were internally confusing or misleading, and that some provisions were
2 unworkable.

3 18. On November 27, 2001, the Commission considered Staff's Proposed Order, and
4 determined that it would be set for further consideration and vote at a future Special Open Meeting.

5 19. On December 17, 2001, Sprint filed additional comments on Staff's final draft of the
6 Proposed Rules.

7 20. On December 17, 2001, Staff filed a Legal Memorandum concerning the
8 Commission's jurisdiction over wireless carriers.

9 21. On January 8, 2002, WorldCom filed proposed language for the Proposed Rules
10 regarding electronic authorization as a means for lifting preferred carrier freezes.

11 22. On May 3, 2002, Qwest filed recommended revisions to Staff's final draft of the
12 Proposed Rules.

13 23. On May 7, 2002, MCI WorldCom filed comments in favor of allowing electronic
14 authorization as a means for lifting preferred carrier freezes.

15 24. On May 16, 2002, following a Special Open Meeting, the Commission issued
16 Decision No. 64800, which ordered publication in the Arizona Administrative Register of a Notice of
17 Proposed Rulemaking and the scheduling of a public comment hearing regarding the making of the
18 Proposed Rules, which were attached as Exhibit A to the Decision.

19 25. On May 17, 2002, by Procedural Order, the Commission scheduled a public comment
20 hearing on the Proposed Rules for July 8, 2002.

21 26. Pursuant to law, Notice of Proposed Rulemaking was published on June 7, 2002 in the
22 Arizona Administrative Register.

23 27. On June 5 and June 7, 2002, Qwest, WorldCom, Inc., AT&T, Cox, Allegiance
24 Telecom of Arizona, Inc., and the Arizona Wireless Carriers Group filed written comments on the
25 Proposed Rules.

26 28. On June 26, 2002, Qwest and Staff filed responsive comments to the June 5 and June
27 7, 2002 filings. Several parties' comments, including those filed by Staff, indicated that clarification
28 might be required for certain of the Proposed Rules.

1 29. On July 8, 2002, Citizens filed written comments on the Proposed Rules.

2 30. On July 8, 2002, a public comment hearing was held as scheduled, at which the
3 Commission heard oral comments from Citizens Communications Company, Cox Communications,
4 AT&T Communications of the Mountain States, AT&T Wireless, Verizon Wireless, ALLTEL, and
5 Staff.

6 31. During the public comment hearing, Staff requested the opportunity to file further
7 proposed clarifications to proposed A.A.C. R14-2-1914, R14-2-2005, and R14-2-2012. Verizon
8 Wireless requested an opportunity to respond to any such filing.

9 32. A Procedural Order was issued on July 9, 2002, directing Staff to file its proposed
10 language changes to proposed A.A.C. R14-2-1914, R14-2-2005, and R14-2-2012 by July 12, 2002,
11 and directing all interested parties to respond on or before July 24, 2002.

12 33. Staff filed its proposed language changes as Supplemental Comments on July 9, 2002.
13 On July 24, 2002, AT&T, the Arizona Wireless Carriers Group and Cox filed responsive comments.

14 34. A summary of the comments that the Commission received on specific sections of the
15 Proposed Rules following their publication, including both technical and legal issues, and the
16 Commission's analysis and resolution of those comments, are included in the Summary of Comments
17 and Response, which is attached hereto as Appendix B and incorporated herein by reference.
18 Appendix B was prepared in accordance with A.R.S. § 41-1001(14)(b)(iii), and is to be included in
19 the Preamble to be published with the Notice of Final Rulemaking.

20 35. In response to comments received, as explained in Appendix B, some clarifying
21 language has been incorporated into some sections of the Proposed Rules, but no substantial changes
22 to the Proposed Rules are required.

23 36. The text of the Proposed Rules incorporating the clarifying modifications is set forth
24 in Appendix A, attached hereto and incorporated herein by reference.

25 37. No Notice of Supplemental Rulemaking is required.

26 38. Prepared in accordance with A.R.S. § 41-1057, the Economic, Small Business, and
27 Consumer Impact Statement is set forth in Appendix C, attached hereto and incorporated herein by
28 reference.

CONCLUSIONS OF LAW

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2 1. Pursuant to Article XV of the Arizona Constitution, §§ 40-202, 40-203, 40-321 and 40-
3 322, A.R.S. Title 40, generally, and A.R.S. § 44-1572 *et seq.*, the Commission has jurisdiction to
4 enact A.A.C. R14-4-1901 through A.A.C. R14-4-2012.

5 2. Notice of the hearing was given in the manner prescribed by law.

6 3. The Proposed Rules as set forth in Appendix A contain no substantial changes from the
7 Proposed Rules published in the Notice of Proposed Rulemaking.

8 4. Enactment of A.A.C. R14-4-1901 through A.A.C. R14-4-2012 as set forth in Appendix A
9 is in the public interest.

10 5. The Summary of Comments and Response set forth in Appendix B should be adopted.

ORDER

11
12 IT IS THEREFORE ORDERED that proposed A.A.C. R14-4-1901 through A.A.C. R14-4-
13 2012 as set forth in Appendix A and the Summary of Comments and Response as set forth in
14 Appendix B are hereby adopted.

15 IT IS FURTHER ORDERED that the Economic, Small Business, and Consumer Impact
16 Statement, as set forth in Appendix C, is hereby adopted.

17 IT IS FURTHER ORDERED that the Commission's Utilities Division shall submit adopted
18 Rules A.A.C. R14-4-1901 through A.A.C. R14-4-2012, as set forth in Appendix A; the Summary of
19 Comments and Response, as set forth in Appendix B; and the Economic, Small Business, and
20 Consumer Impact Statement, as set forth in Appendix C; to the Office of the Attorney General for
21 endorsement.

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1 IT IS FURTHER ORDERED that the Commission's Utilities Division is authorized to make
 2 non-substantive changes in the adopted Rules A.A.C. R14-4-1901 through A.A.C. R14-4-2012, and
 3 to the adopted Summary of Comments and Response, in response to comments received from the
 4 Attorney General's office during the approval process under A.R.S. § 41-1044 unless, after
 5 notification of those changes, the Commission requires otherwise.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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 10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11
 12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 13 Secretary of the Arizona Corporation Commission, have
 14 hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this ____ day of _____, 2002.

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 16 _____
 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

17
 18 DISSENT _____
 19 TW:mlj

SERVICE LIST FOR:

RULES TO ADDRESS SLAMMING AND OTHER
DECEPTIVE PRACTICES

DOCKET NO.

RT-00000J-99-0034

QWEST Corporation
1801 California Street, #5100
Denver, Colorado 80202

Maureen Arnold
U S WEST Communications, Inc.
3033 N. Third Street, Room 1010
Phoenix, Arizona 85012

Michael M. Grant
GALLAGHER AND KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Timothy Berg
FENNEMORE CRAIG
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85016

Mark Dioguardi
TIFFANY AND BOSCO PA
500 Dial Tower
1850 N. Central Avenue
Phoenix, Arizona 85004

Deborah R. Scott
Associate General Counsel
Citizens Communications Company
2901 North Central Avenue, Ste. 1660
Phoenix, AZ 85012

Curt Huttshell
Citizens Communications
4 Triad Center, Ste. 200
Salt Lake City, UT 84180

Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004-0001

Darren S. Weingard
Stephen H. Kukta
SPRINT COMMUNICATIONS CO L.P.
1850 Gateway Drive, 7th Floor
San Mateo, California 94404-2467

Thomas H. Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, Arizona 85007

Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

Cox Arizona Telcom, L.L.C.
20401 N. 29th Avenue, Suite 100
Phoenix, Arizona 85027

Richard M. Rindler
Morton J. Posner
SWIDER & BERLIN
3000 K Street, N.W. Suite 300
Washington, DC 20007

Michael W. Patten
ROSHKA HEYMAN & DEWULF
400 E. Van Buren, Suite 800
Phoenix, Arizona 85004

Charles Kallenbach
AMERICAN COMMUNICATIONS
SERVICES INC
131 National Business Parkway
Annapolis Junction, Maryland 20701

1 Karen L. Clauson
2 Thomas F. Dixon
3 MCI TELECOMMUNICATIONS CORP
707 17th Street, #3900
Denver, Colorado 80202

4 Richard S. Wolters
5 AT&T & TCG
6 1875 Lawrence Street, Room 1575
Denver, Colorado 80202

7 Joyce Hundley
8 UNITED STATES DEPARTMENT OF
9 JUSTICE
10 Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

11 Joan Burke
12 OSBORN MALEDON
13 2929 N. Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, Arizona 85067-6379

14 Scott S. Wakefield, Chief Counsel
15 RUCO
16 1110 W. Washington Street, Ste. 200
Phoenix, Arizona 85007

17 Gregory Hoffman
18 795 Folsom Street, Room 2159
19 San Francisco, CA 94107-1243

20 Daniel Waggoner
21 DAVIS WRIGHT TREMAINE
22 2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

23 Douglas Hsiao
24 Jim Scheltema
25 Blumenfeld & Cohen
1625 Massachusetts Ave. N.W., Suite 300
26 Washington, DC 20036

Diane Bacon, Legislative Director
COMMUNICATIONS WORKERS OF
AMERICA
5818 North 7th Street, Suite 206
Phoenix, Arizona 85014-5811

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, Arizona 85281

Mark P. Trinchero
DAVIS WRIGHT TREMAINE LLP
1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201

Jon Loehman
Managing Director-Regulatory
SBC Telecom, Inc.
5800 Northwest Parkway
Suite 135, Room 1.S.40
San Antonio, Texas 78249

Lyndall Nipps
Director, Regulatory
Allegiance Telecom, Inc.
845 Camino Sure
Palm Springs, California 92262

M. Andrew Andrade
5261 S. Quebec Street, Suite 150
Greenwood Village, CO 80111
Attorney for TESS Communications, Inc.

Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, Arizona 85016-9225

Laura Izon
Covad Communications Company
4250 Burton Street
Santa Clara, CA 95054

Al Sterman
ARIZONA CONSUMERS COUNCIL
2849 E 8th Street
Tucson Arizona 85716

1 Brian Thomas
2 TIME WARNER TELECOM, INC.
3 520 S.W. 6th Avenue, Suite 300
4 Portland, Oregon 97204

5 Jon Poston
6 ACTS
7 6733 E. Dale Lane
8 Cave Creek, Arizona 85331-6561

9 Robert J. Metli
10 CHEIFETZ & IANNITELLI, P.C.
11 3238 N. 16th Street
12 Phoenix, Arizona 85016
13 Attorneys for Citizens Communications Co.

14 Christopher Kempley, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Ernest G. Johnson, Director
20 Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007